SINGAPORE REPORTS

THE "BIG BEACHER"; BUILDERS MERCHANTS & GENERAL AGENCIES v. "BIG BEACHER" ex "MAGELLAN" ex "HEAVY LIFT HERO", OWNERS OF

[C.A. (Kulasekaram, Lai Kew Chai & Chua JJ.) April 24, 1984]
[Singapore – Civil Appeal No. 99 of 1981]

Practice & Procedure – Writ of Summons – Renewal of – Exercise of Court's discretion – Principles applicable – R.S.C. 1970, O.6 r. 7(1)

Shipping Law – Arrest of ship – Writ of Summons – Renewal of – Court's discretion – Principles applicable – R.S.C. 1970, O.6 r.7(1).

By a Writ of Summons issued on November 28, 1977, the appellants made an *in rem* claim against the owners and other persons interested in the vessel "Big Beacher" for damages for the non-delivery of the timber which they had shipped in 1976 under five bills of lading on the vessel from Singapore to Dubai. The Writ was renewed on three occasions.

In support of their application to renew the Writ on the third occasion for a further period of 12 months from November 28, 1980, the appellant's deposed that the vessel had not called at Singapore during the period November 28, 1979 to November 27, 1980 and that therefore it had not been possible to effect service of the Writ on the vessel. On that basis, the Writ was renewed. On August 5, 1981, the appellants served the extended Writ on the vessel which was arrested on the same day.

The new owners of the vessel obtained leave to intervene in the proceedings. Their conditional appearance was followed by their application to set aside the Writ of Summons, the Warrant of arrest issued and the service thereof on the ground that Order 6 rule 7(1) of the Rules of the Supreme Court, 1970 was not complied with.

The learned Deputy Registrar dismissed the application of the Interveners who successfully appealed to the learned Chief Justice. The appellants appealed against the decision of the learned Chief Justice.

Held, dismissing the appeal: (1) where an application to renew a Writ is made after the expiry of the relevant period of limitation, the court should not exercise its discretion in favour of renewing the Writ, the effect of which would be to deprive the defendants of an otherwise good defence to the claim, unless there were exceptional circumstances which amounted to a good and sufficient cause for renewing the Writ;

(2) in this case, the appellants in 1980 had failed to take reasonable steps to trace the whereabouts of the vessel and effect service of the Writ;

(3) there was therefore no reason to interfere with the discretion exercised by the learned Chief Justice.

Cases referred to:
(1) *Heaven* v. *Road and Rail Wagons Ltd.* [1965] 2 Q.B. 355.
(2) *The Berny* [1977] 2 Lloyd's Rep. 533.

CIVIL APPEAL.

C. Arul (*S. Balasubramaniam* with him) for the appellants.

K. Parasuram for the respondents.

Cur. Adv. Vult.

Kulasekaram J. (delivering the Judgment of the Court): At the conclusion of the hearing of this appeal, we dismissed it with costs. We now give our reasons.

By a Writ of Summons issued on November 28, 1977 the Appellants made an *in rem* claim against the owners and other persons interested in the vessel "Big Beacher" ex "Heavy Lift Hero" for damages for the non-delivery of the timber which they had shipped in 1976 under five bills of lading on the vessel from Singapore to Dubai. The Writ was renewed on two occasions.

A third renewal of the Writ was also obtained. In support of their application to renew the Writ on the third occasion for a further period of 12 months from November 28, 1980, it was deposed in an affidavit on behalf of the Appellants that the vessel had not called at Singapore during the period November 28, 1979 to November 27, 1980 and that therefore it had not been possible to effect service of the Writ on the vessel. On that basis, the Writ was renewed.

On August 5, 1981, the Appellants served the extended Writ on the vessel which was arrested on the same day.

The new owners of the vessel, Leco Marine S A, obtained leave to intervene in the proceedings. Their conditional appearance was followed by their application to set aside the Writ of Summons, the Warrant of Arrest issued and the service thereof on the ground that Order 6 rule 7(1) of the Rules of the Supreme Court, 1970 was not complied with. In support of their application, the Interveners proved that the vessel had called at Singapore on September 29, 1980 and had remained within our jurisdiction until March 10, 1981. It was accordingly contended on their behalf that the Appellants had failed to take all reasonable steps to serve the Writ during the relevant currency of

the Writ. It was further contended on their behalf that where, as in the present case, the cause of action, to which the Writ related, had become time-barred, the authorities establish the principle that the court should not exercise its discretion to renew the Writ, and by doing so, deprive the Respondents of an otherwise good defence to the claim, unless there were exceptional circumstances which amounted to a good and sufficient cause for doing so.

In opposing the application, the Appellants through their Solicitors deposed that their only source of information was the records kept by the Port of Singapore Authority to whom they had made regular telephonic enquiries. It appeared that their enquiries made in 1978 with Lloyd's Intelligence Service through their London Solicitors revealed that the vessel was laid up in the Philippine waters in November 1978. Proceedings by way of attachment could only be taken against the vessel in the Philippines if a bond equivalent to the amount of the claim was posted. They were therefore not pursued.

It was only in July 1982 that the Appellants received confidential information that the vessel's name had been changed from "Heavy Lift Hero" to "Big Beacher" and that she was then lying in Singapore waters, whereupon the arrest was effected. In the circumstances, the Appellants claimed that they had not been lax in the prosecution of their claim.

After hearing the application, the learned Deputy Registrar dismissed the application of the Interveners who successfully appealed to the learned Chief Justice. Against the decision of the learned Chief Justice, this appeal was brought before us.

The principle governing the renewal of a Writ has been firmly settled by the decision in *Heaven* v. *Road and Rail Wagons Limited*[1]. It is this. Where an application to renew a Writ is made after the expiry of the relevant period of limitation, the court should not exercise its discretion in favour of renewing the Writ, the effect of which would be to deprive the defendants of an otherwise good defence to the claim, unless there were exceptional circumstances which amount to a good and sufficient cause for renewing the Writ. Such circumstances, as a guide, were ably set out by Brandon J. (as he then was) in *The Berny*[2]. They are so well known that we do not think it is necessary to repeat them. It was quite plain to us in the course of the arguments that the Appellants in 1980 had failed to take reasonable steps to trace the whereabouts of the vessel and effect service of the Writ. They did not continue to keep a check with Lloyds Intelligence Service and the Panamanian Authorities in 1980 as they had done earlier. If they had done so, the change of the name of the vessel and its presence in Singapore for an extended period in the last quarter of 1980 would have been discovered by them. Instead, they had relied on the records of the Port of Singapore Authority, which only showed the latest name of the vessel, and on a few phone calls to them. The unreliability of their enquiries, and the inconclusive nature of any answers these enquiries must have elicited, ought to have been plain to the Appellants. We therefore saw no reason to interfere with the discretion exercised by the learned Chief Justice.

Appeal dismissed.

Solicitors: *C. Arul & Partners; Godwin & Co.*

ARTIC BUILDERS & CO. (PTE.) LTD. v. TAN TONG MENG CO. (PTE.) LTD.

[C.A. (Wee Chong Jin C.J., Kulasekaram & Lai Kew Chai JJ.) May 11, 1984]
[Singapore – Civil Appeal No. 52 of 1981]

Arbitration – Interim Award – Application for award to be set aside, varied or remitted to Arbitrator – Remission Order – Whether there was miscarriage of justice at remission hearing

Administrative Law – Natural justice – Arbitration – Whether arbitrator had acted judicially and fairly at remission hearing.

By a written agreement dated November 15, 1975, the appellants/defendants agreed to erect and complete for the respondents/plaintiffs a 19-storey apartment block for $4,227,818.00. Clause 25(1) provided for the termination of the building agreement by the employer, i.e. the respondents. Before the completion of the works, the respondents by a letter of June 2, 1978 terminated the appellant's employment. On June 1978 the parties agreed to refer all matters in dispute between them to a sole arbitrator. The latter made an Interim Award on May 9, 1979. The respondents sought to set aside, vary or remit to the Arbitrator the Interim Award on 5 grounds. The respondents contended, *inter alia*, that the Interim Award did not deal with all the matters referred to by the Arbitrator for his decision. The remission went to the Arbitrator and he